

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ALICIA G. ATIENZA, et al.,

Plaintiffs,

vs.

AMERICAN BROKERS CONDUIT, et al.,

Defendants.

Case No: C 11-03152 SBA

**ORDER CONTINUING MOTION
HEARING AND DIRECTING
PLAINTIFFS TO FILE RESPONSE
TO DEFENDANTS' MOTION TO
DISMISS**

Dkt. 9

Plaintiffs, acting pro se, filed a largely unintelligible Complaint in this Court on June 24, 2011. The parties are presently before the Court on Defendant American Home Mortgage Servicing and Mortgage Electronic Registration System, Inc.'s motion to dismiss. Dkt. 9. The motion currently is noticed for hearing on January 31, 2012. Dkt. 21. Under Local Rule 7-3, any opposition or statement of non-opposition was due no later than two weeks after the motion was filed. Since the motion was filed on September 13, 2011, Plaintiffs' opposition was due by September 27, 2011. To date, however, no response to the motion has been filed.

Paragraph 8 of the Court's Standing Orders expressly warns as follows: "**Effect of Failing to Oppose a Motion:** The failure of the opposing party to timely file a memorandum of points and authorities in opposition to any motion or request shall constitute a consent to the granting of the motion." Dkt. 8 at 5. Notwithstanding the requirements of Civil Local Rule 7-3, and the Court's warning in its Standing Orders, Plaintiffs have filed nothing in response to the pending motion.

"Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with any order of the court." Ferdik v. Bonzelet 963 F.2d 1258, 1260 (9th Cir. 1992). As such, the failure to file an opposition to a motion to dismiss

1 in the manner prescribed by the Court's Local Rules is grounds for dismissal. Ghazali v.
2 Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). Nevertheless, the Court will sua sponte
3 afford Plaintiffs an additional opportunity to file a response to Defendants' motion to
4 dismiss. While the Court does not countenance Plaintiffs' disregard of the Local Rules, the
5 Court grants such extension in consideration of less drastic alternatives to dismissal. See
6 Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002). Nonetheless, Plaintiffs are
7 warned that the failure to file an opposition by the deadline set by the Court will be deemed
8 grounds for dismissing the action under Rule 41(b), without further notice. Accordingly,

9 IT IS HEREBY ORDERED THAT:

10 1. Plaintiffs shall file their response to Defendants' motion to dismiss by no later
11 than **January 25, 2012**. If Plaintiffs do not intend to prosecute this action, they should file
12 a stipulation for dismissal under Rule 41(b), a request for dismissal under Rule 41(a), or a
13 statement of non-opposition by that deadline. The failure timely comply with this Order
14 will result in the dismissal of the action. If applicable, Defendants may file a reply by no
15 later than **February 7, 2012**.

16 2. Both the motion hearing and the Case Management Conference scheduled for
17 January 30, 2012, are CONTINUED to **March 6, 2012 at 1:00 p.m.** Pursuant to Federal
18 Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court, in its discretion, may
19 resolve the motion without oral argument, prior to the new hearing date. The parties are
20 advised to check the Court's website to determine whether a court appearance is required.

21 IT IS SO ORDERED.

22 Dated: January 10, 2012


23 SAUNDRA BROWN ARMSTRONG
24 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 ALICIA G ATIENZA et al,

5 Plaintiff,

6 v.

7 AMERICAN BROKERS et al,

8 Defendant.
9 _____/

Case Number: CV11-03152 SBA

10 **CERTIFICATE OF SERVICE**

11
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on January 12, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Alicia G. Atienza
19 136 Saint Francis Boulevard
20 San Francisco, CA 94127

21 Clodualdo A. Atienza
22 136 Saint Francis Boulevard
23 San Francisco, CA 94127

24 Dated: January 12, 2012

Richard W. Wieking, Clerk

25 By: LISA R CLARK, Deputy Clerk
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